

State of South Dakota

SEVENTY-SEVENTH SESSION LEGISLATIVE ASSEMBLY, 2002

462H0597

SENATE BILL NO. 91

Introduced by: Senators Staggers, Greenfield, Ham, Madden, and Olson (Ed) and
Representatives Gillespie, Begalka, Clark, Frost, Garnos, Hanson (Gary),
McCaulley, McCoy, Monroe, Nesselhuf, Sigdestad, Sutton (Duane), and Van
Gerpen

1 FOR AN ACT ENTITLED, An Act to provide for DNA testing for certain inmates.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Any person confined in the state penitentiary for a conviction of murder or any
4 felony under chapter 22-22 may request the state laboratory to perform deoxyribonucleic acid
5 (DNA) testing on evidence relevant to that person's case and on a sample drawn from that
6 person. The request shall be sent to the state laboratory, the state's attorney's office which
7 handled the person's case, and the attorney general. The request shall state:

8 (!) The specific evidence to be tested;

9 (2) The specific type of test requested; and

10 (3) The person's intent to pay the costs of testing, medical assistance in obtaining the
11 person's sample, and transporting the person's sample and the evidence to the state
12 laboratory.

13 Upon receipt of such a request, the state laboratory and the state's attorney's office that
14 handled the person's case shall within sixty days inform the person and the attorney general in



1 writing either of their intent to grant the request and of the associated costs, or of their intent to
2 deny the request and of the reasons why the request is not to be granted. Such requests shall be
3 granted upon receipt of payment of costs from either the person or a third party unless the
4 evidence is not available for testing because it is in the possession of a third party who refuses
5 to submit it for testing or the test requested is one the state laboratory is incapable of performing
6 due to lack of equipment, supplies, or trained personnel.

7 If the state laboratory is incapable of performing a test but the state regularly uses some other
8 laboratory to perform tests of the type the person requests, the person may request of the
9 attorney general that the other laboratory perform the test and that request shall be reviewed
10 under the same procedure provided in this section.

11 Section 2. Any law enforcement agency of the state shall preserve any DNA evidence in its
12 possession that it has reason to believe exists, if that evidence is relevant to any conviction of
13 murder or of any felony under chapter 22-22. No law enforcement agency is required to preserve
14 DNA evidence if the conviction has been overturned and the state has exhausted its appeals or
15 declined to appeal, the convicted person has completed the sentence and has not indicated any
16 intention to appeal, or the convicted person has died without filing an appeal.

17 Section 3. This Act is effective on January 1, 2003.